

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
OF THE STATE OF WASHINGTON

KETRON ISLAND ENTERPRISES, INC., )  
Appellant, )  
v. )  
STATE OF WASHINGTON DEPARTMENT )  
OF ECOLOGY, )  
Respondent. )

PCHB No. 90-135

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER

Gary Lundgren, President of Ketron Island Enterprises, Inc.  
appealed the Washington State Department of Ecology's June 21, 1990,  
Order number DE 90-S188, which cancelled the National Pollutant  
Discharge Elimination System Permit Number WA-003757-5, effective  
June 23, 1990.

A hearing on the merits was held on January 7, 1991, in Seattle,  
Washington. Board Member Annette McGee presided and Board Member  
Harold S. Zimmerman reviewed the record.

The Court Reporter was Lettie Hylarides of Evergreen Court  
Reporting, Everett, Washington.

At the hearing Gary Lundgren, President of Ketron Island  
Enterprises, Inc., represented the appellant. Ms. Kerry O'Hara,  
Washington State Assistant Attorney General, represented the State  
Department of Ecology.

Witnesses were sworn and gave testimony. Exhibits were admitted

1  
2 and examined. From the testimony and exhibits examined, the Board  
3 makes these

4 FINDINGS OF FACT

5 I.

6 On July 1, 1975, Ketron Island Enterprises, Inc. was issued a  
7 National Pollutant Discharge Elimination System Waste Discharge  
8 (NPDES) Permit No. WA-003757-5 by the Washington State Department of  
9 Ecology (DOE). This permit was issued in compliance with the  
10 provisions of Chapter 90.48 RCW and the Federal Water Pollution  
11 Control Act Public Law 92-500.

12 The sewage treatment plant is located on Ketron Island, near  
13 Steilacoom, Washington.

14 The discharge location is Lat. 47° 09' 54" N and Long. 122° 38'  
15 00" W in the receiving waters of Puget Sound. The monthly average  
16 quantity of allowed effluent permitted to be discharged in the Sound  
17 was not to exceed the flow of 0.009 mgd, and Treatment Design Flow is  
18 0.034 mgd.

19 II.

20 By way of background, Chapter 173-223 WAC provided for setting  
21 the Interim Wastewater Discharge Permit fees. The 1988 WAC  
22 173-223-040 establishes fee schedules for permits issued by the DOE  
23 pursuant to 90.48.160, .162, and .260 RCW. Subsequently, the voters  
24 approved Initiative 97 requiring the Department to change the fee  
25 schedule. In response to the Initiative, DOE revised the fee schedule  
26 for permits. WAC 173-224-040 (1989).

1  
2 III.

3 On July 25, 1988, the DOE sent Ketron Island Enterprises a  
4 statement for their fee established by WAC 173-223-040. It was  
5 addressed to Larry Lundgren, Steilacoom, Washington. The correct name  
6 is Gary Lundgren, not Larry as DOE addressed. The statement was an  
7 annual fee of five hundred dollars (\$500.00) for Ketron Island  
8 Enterprises Discharge Permit No. WA-003757-5, with a quarterly payment  
9 of one hundred twenty-five dollars (\$125.00) due on August 24, 1988.

10 The statement also included the following information:

11 "The annual permit fee may be paid in full or it may  
12 be paid in four equal quarterly payments. Interest  
13 is not charged on quarterly payments. Interest is  
14 charged on late payments at a rate of ten percent per  
15 annum, compounded monthly. Checks should be made  
16 payable to the Department of Ecology. Please send  
17 the blue copy of the invoice with your payment to  
18 Department of Ecology, Wastewater Discharge Permit  
19 fee Program, P. O. Box 5128, Lacey, WA 98503-5128.  
20 A pre-addressed envelope is enclosed for your use.  
21 If you have questions about your billing, please call  
22 or write the Department of Ecology, Wastewater  
23 Discharge Permit Fee Program, PV-11, Olympia, WA  
24 98504. The telephone number is (206) 438-7039.

18 State and National Pollution Discharge Elimination  
19 System Wastewater Discharge Permits may be terminated  
20 for failure to pay permit fees. Discharge of  
21 Wastewater without a permit is subject to both civil  
22 and criminal penalties."

21 However, the statement was returned to the DOE, because of  
22 incorrect address.

23 IV.

24 A new address was secured for Mr. Lundgren, and another statement  
25 with the same explanation was sent on August 10, 1988, with quarterly  
26

1  
2 payment due September 9, 1988. This billing was sent to Box N,  
3 Seattle, Washington 98121, and it was not returned to the Department  
4 because of incorrect address. There was also no response from Mr.  
5 Lundgren.

6 V.

7 On September 22, 1988, a second notice of fees was sent to Larry  
8 Lundgren at 2623 Second Avenue, Ketron Island, Box N., Seattle,  
9 Washington 98121. There was an explanation that failure of payment  
10 results in an interest charge of one dollar and forty-seven cents  
11 (\$1.47), and a warning, that failure to pay could result in  
12 termination of the State NPDES permit for Ketron Island Enterprises.

13 The letter also stated that if the permit was terminated, and  
14 there was a continuance of operation of the facility, without the  
15 proper permit, it could result in a penalty of up to one thousand  
16 dollars (\$1,000.00) per day.

17 VI.

18 In a telephone conversation between Beverly Poston of the DOE  
19 Water Quality/Permit Fee Unit and Mr. Gary Lundgren on November 4,  
20 1988, Ms. Poston explained the fee schedule. She also told Mr.  
21 Lundgren of his need to fill out the proper forms to apply for a  
22 reduction of fees based on his claim that only eight homes were being  
23 serviced.

1  
2 At this time Mr. Lundgren also told Ms. Poston that the Treatment  
3 Facility was not operating, and sewage flowed through the plant into  
4 Puget Sound.

5 On November 18, 1988, Mr. Lundgren requested the necessary forms,  
6 which were sent to him immediately. He never sent them back to the  
7 DOE, for review and possible reductions of the fees owed.

8 VII.

9 Because the Department had never received the application for a  
10 reduced fee schedule, based on the number of residences served, they  
11 did not reduce the amount owed. On January 30, 1989, they sent Mr.  
12 Lundgren what they called a partial third quarterly statement in the  
13 amount of eighty-three dollars and thirty-three cents (\$83.33). The  
14 quarterly payment was less than the first two because of a voter  
15 approved Initiative 97 requiring the Department to change the fee  
16 system.

17 This statement showed a ledger balance of the following:

18 First Quarter	\$125.00
19 Second Quarter	125.00
20 Third Quarter	<u>83.33</u>
Total Due	\$333.33

21 Again, there was a warning statement that failure to pay the fees  
22 could result in the termination of the NPDES permit number WA-003757-5  
23 for Ketron Island Enterprises.

VIII.

On March 6, 1989, Mr. Lundgren was sent an explanation of the DOE's fee calculation for Wastewater Discharge Permits along with a Calculation Form for Permit Fees to be completed and returned to DOE, in order for the Department to re-calculate the permit fee for the March 1 to June 30, 1989 period. The letter was sent to 2623 Second Avenue, Seattle, Washington, and it was an explanation of the fee schedule based on the passage of Initiative 97. Information was needed to see if fees would remain the same, or if there could be a reduction for Ketron Island Enterprises, Inc.

No forms or information was returned to the DOE from Mr. Lundgren.

IX.

On June 2, 1989, a final statement for fiscal year 1988-1989 was sent to Ketron Island Enterprises c/o Mr. Lundgren, Box N, Seattle, Washington 98121 in the amount of five hundred dollars (\$500.00). Again, they included the notice that failure to pay permit fees may result in termination of the NPDES permit. This bill listed all quarters as follows:

First Quarter	\$125.00
Second Quarter	125.00
Third Quarter	83.33 (partial)
Fourth Quarter	166.67

X.

On June 16, 1989, a letter from Beverly Poston was sent to Ketron Island Enterprises, c/o Mr. Lundgren, 2623 Second Avenue, Seattle,

1  
2 Washington 98121. The letter was accompanied with a copy of the 1989  
3 WAC 173-224, which would become effective on July 1, 1989. (See  
4 Findings of Fact II). It further explained that Initiative 97, now  
5 codified as RCW 90.48.465, limited the amount of fees assessed for  
6 municipal wastewater discharges to sixty cents (\$.60) per year, per  
7 residential equivalent. The Department of Ecology also notified Mr.  
8 Lundgren at this time that they were using a residential equivalent of  
9 fifty (50), which would amount to a total annual permit fee of thirty  
10 dollars (\$30.00). They also stated that Mr. Lundgren should contact  
11 them if there were any questions.

12 On August 1, 1989, the first statement for the 1989-90 fiscal  
13 year under the new permit fee structure was sent to Mr. Lundgren, 2623  
14 Second Avenue, Seattle, Washington stating that the annual fee for  
15 NPDES permit No. WA-003757-5 was \$30.00 and the semi-annual fee was  
16 \$15.00, which was due August 31, 1989. No payment was received.

17 XI.

18 On October 31, 1989, Mr. Lundgren was notified by mail addressed  
19 to 2617 Second Avenue, Seattle, Washington, the intent of the DOE to  
20 terminate Ketron Island Enterprises' NPDES permit number WA003757-5  
21 within 30 days of the notice, Number DE89-S205. Mr. Lundgren had 30  
22 days from receipt of the notice to apply to the Department for  
23 review. Besides the mailing, personal contact was made with Mr.  
24 Lundgren.

1  
2 XII.

3 On November 3, 1989, a packet explaining permit fee calculations  
4 and an application form for final Discharge Permit Fee Reductions for  
5 fiscal years 1988-1989 and 1989-1990 was faxed to Mr. Lundgren by  
6 Beverly Poston of the DOE's Permit Fee Unit, upon his telephoned  
7 request. Ms. Poston also explained the two fiscal years fee  
8 calculation to him, as well as verbally telling him again, that he  
9 could not receive a fee reduction unless the proper forms were filled  
10 out and returned. The forms were not returned.

11 XIII.

12 On January 2, 1990, Mr. Lundgren was sent another billing for  
13 fiscal year 1989-1990 for thirty dollars (\$30.00) due on February 1,  
14 1990. He paid the thirty dollars by check, dated January 4, 1990.  
15 Ms. Poston applied this thirty dollars to the 1988-1989 outstanding  
16 debt of five hundred (\$500.00), leaving a balance of four hundred  
17 seventy dollars (\$470.00) for that fiscal year. This was an  
18 individual decision made by Ms. Poston.

19 XIV.

20 On June 21, 1990, the DOE sent Mr. Lundgren by certified mail  
21 Order No. DE90-S188, cancelling the NPDES Discharge Permit No.  
22 WA-003757-5, and ceasing immediately all discharges of pollutants into  
23 waters of the state (Puget Sound, Lat. 47° 09' 54" N and Long. 122°  
24 30' 00" W. The reason for termination was failure to pay fees, billed  
25 by the Department, which had been required for fiscal year 1988-1989.  
26



XV.

Mr. Lundgren paid \$30.00 to the DOE on July 6, 1990, and requested cancellation of Order No. DE90-S188. He also enclosed the application for Small Discharges Permit Fee Reductions, dated July 12, 1990, stating that there were 12 residential equivalents on Ketron Island.

Mr. Lundgren was called by telephone on July 9, 1990, and told that the NPDES had been cancelled for failure to pay the four hundred seventy dollar (\$470.00) fee for fiscal year 1988-89, and that he had been notified of this by certified mail on June 21, 1990. Therefore, his thirty dollar (\$30.00) payment in July, 1990, was being refunded because of the permit termination, which was effective June 23, 1990.

XVI.

Mr. Gary Lundgren's position is that he did not receive all of the billing statements and notices that the Department sent out, because of the addresses. However, explanations were communicated to him by phone about the fee charges and how they could be reviewed by the Department, if he would fill out the Application for Reduced Fees. Also, no statements or notices were returned to the DOE for incorrect address, except for the first statement dated July 25, 1988.

XVII.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board makes these

1  
2 CONCLUSIONS OF LAW

3 I.

4 The Board has jurisdiction over the appeal of this matter  
5 (Chapter 43.21B RCW).

6 II.

7 The Department of Ecology had the authority to establish an  
8 interim fee system for permits issued by the Department pursuant to  
9 RCW's 90.48.160, .162 and .260. The fees were set forth in  
10 173-223-040 WAC, 1988.

11 Subsequently, with the passage of Initiative 97, RCW 90.48.465  
12 authorized the Department of Ecology to re-establish annual fees, to  
13 collect expenses for issuing and administering each class of permits  
14 under RCW's 90.48.160, .162 and .260. This was set forth in WAC  
15 173-224-040 (1989).

16 The Department also has the authority to reduce fees for small  
17 discharges permits. (WAC 173-224-090).

18 III.

19 The Department has the authority to cancel waste discharge  
20 permits for nonpayment of annual fees. (WAC's 173-220-150 and  
21 173-216-130).

22 IV.

23 Even though the matter was complicated, to some degree, by  
24 mailings to different addresses and to a Larry in place of Gary  
25 Lundgren, the mailings were all to Ketron Island Enterprises, Inc.

1  
2 We conclude that the Department gave Ketron Island Enterprises,  
3 Inc., ample opportunity to respond to fees billed and warnings of the  
4 possible NPDES permit termination. There were at least seven written  
5 mailings of notification and three telephone conversations between  
6 Ketron Island Enterprises, Inc. and the Department of Ecology.  
7 Neither Mr. Lundgren or Ketron Island Enterprises, Inc. paid the  
8 required amount. Nor did the DOE receive the application for reduced  
9 fees, until they issued an order of termination. (See Findings of  
10 Fact IV - XII and XV.)

11 V.

12 Any Findings of Fact deemed to be a Conclusion of Law is hereby  
13 adopted as such. From these Conclusions of Law, the Board enters this:  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

ORDER

The Department of Ecology's Order No. DE90-S188 is hereby  
AFFIRMED.

DATED this 14<sup>th</sup> day of February, 1991.

POLLUTION CONTROL HEARINGS BOARD

Annette S. McGee  
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Member